

U.S. Department of Labor

Board of Contract Appeals
1111 20th Street, N.W.
Washington, D.C. 20036



DATED: August 19, 1985

Case No. 1985-BCA-24

In the Matter of:

RES-CARE, INC.,

Contract Nos.
28-7-0778-43, 28-1-003-43
Appellant

DECISION AND ORDER

The appellant, Res-Care, Inc., and the Contracting Officer for the United States Department of Labor have agreed to the following in the above-captioned matter:

1. The appellant operated the Mississippi Job Corps Center in Crystal Springs, Mississippi, on behalf of the United States Department of Labor between October 1, 1978 and September 30, 1982 pursuant to Job Corps Contract Nos. 28-7-0778-43 and 28-1-003-43.

2. On February 7, 1985, the Contracting Officer issued a Revised Final Decision relating to these contracts which disallowed \$80,150.00.

3. On December 19, 1984, the appellant forwarded the Department of Labor a check in the amount of \$1,869 representing the reimbursement for amounts disallowed in Finding No. 4 of the aforementioned Final Decision.

4. The remaining disallowances of \$78,281 resulted from the payment of sales taxes to the State of Mississippi both directly, and through vendors, not allowable under the terms of the contract.

5. The Department of Labor will not pursue collection of the remaining disallowances of \$78,281 against the appellant, and shall refer the matter to the United States Department of Justice in order to seek collection of these amounts directly against the State of Mississippi.

6. The contractor, Res-Care, Inc., agrees to continue diligent efforts to collect these disallowed costs from the State of Mississippi, including pursuit of all reasonable channels of appeal. The parties agree that the term "diligent efforts" as used in the preceding sentence shall not be construed to require the contractor to pursue any such channel of appeal wherein the probability that the contractor will ultimately prevail is so minimal as to render pursuit of such channel of appeal unreasonable, in the opinion of counsel for the parties, including but not limited to an instance in which it can be demonstrated that the contractor's claim for refund is barred by the applicable State statute of limitations.

7. The contractor agrees to submit a bi-annual report on all collection efforts to: David O. Williams, Administrator, Office of Program and Fiscal Integrity, U.S. Department of Labor, Employment and Training Administration, 601 D Street, N.W., Room 8400, Washington, D.C. 20213. This report will be submitted on the first day of October and April of each year.

8. Should the contractor receive a refund from the State of Mississippi for improperly levied taxes, it agrees to immediately remit funds paid pursuant to its claim to the Department.

9. Both parties agree to bear their own costs in attorneys fees.

10. Res-Care, Inc. has, in accordance with the settlement agreement, moved to dismiss its appeal in this matter. Accordingly:

ORDER

IT IS ORDERED that the appeal be, and it hereby is, DISMISSED.

NAHUM LITT
Chief Judge and Chairman of
the Board of Contract
Appeals

STUART A. LEVIN
Administrative Law Judge and
Member of the Board of
Contract Appeals

GLENN R. LAWRENCE
Administrative Law Judge and

Member of the Board of Contract
Appeals

Washington, D.C.

SAL: jeh